

January 13, 2021

**Via Electronic Filing**

Honorable Mark A. Hoyer  
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Honorable Emily I. DeVoe  
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**Re: Petition of PECO Energy Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan**

Docket No. M-2020-3020830

Dear Judge Hoyer and Judge DeVoe,

In accordance with the *Interim Order Directing Parties to Respond to Joint Expedited Motion and OALJ's Proposed Revised Schedule* issued on January 11, 2021 (“*Interim Order*”), Natural Resources Defense Council (“NRDC”) submits this response.

The *Interim Order* requested that the parties consider the following proposed revised schedule (“OALJ’s Proposed Revised Schedule”):

	<b>OALJ’s Proposed Revised Schedule</b>
Evidentiary Hearings on or before	February 8, 2021
Brief filed on or before	February 18, 2021
Reply comments/revised plan	March 1, 2021
Certification of Record	March 2, 2021

The OALJ’s Proposed Revised Schedule, while it grants limited relief with respect to the hearing schedule, fails to adequately address the due process issues raised in the *Joint Expedited Motion for Extension of Procedural Schedule* (“*Joint Motion*”). Fundamentally, the parties are having to bear the burden and hardship for something completely outside of their control – the 14-day delay in publishing the Official Notice in the *Pennsylvania Bulletin* (“*Notice*”), which did not occur under January 2, 2021.<sup>1</sup> In response to the *Joint Motion*, the evidentiary hearing dates are proposed to be slipped a few days, but ***none of the intervening litigation deadlines established in the various Prehearing Orders were adjusted.*** As a result, while parties in this docket are

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<sup>1</sup> The due process issues are exacerbated by a second Official Notice published in the January 9, 2021 *Pennsylvania Bulletin*, which extends the deadline for filing responsive pleadings an additional seven days to January 29, 2021.

preparing this Response to the *Interim Order*, we are also finalizing Direct Testimony to be submitted tomorrow in this docket, after having received – and while we are continuing to receive – responses to discovery requests from PECO during the last 48 hours.

This compressed schedule is neither realistic nor necessary; for the reasons stated in the *Joint Motion*, the Commission is not bound by the 120-day timeline stated in its June 2020 Implementation Order. As a result of this unnecessarily compressed schedule, the extent and rigor of the review of EE&C filings required by Act 129 suffer, to the detriment of utility ratepayers throughout Pennsylvania, given the better designed programs that likely would result from adequate scrutiny and review of the Phase IV EE&C programs in this proceeding. And it is not only the ratepayers that bear the consequences; given the role that energy efficiency can play in cost-effectively reducing greenhouse gas emissions, the failure to provide a process that affords a meaningful opportunity to closely review the utilities' Phase IV EE&C filings likely results in the loss of potential climate change benefits as well.

With that background, NRDC offers the following response regarding the OALJ's Proposed Revised Schedule:

- The evidentiary hearing date of February 8, 2021 is acceptable. February 9<sup>th</sup> or 10<sup>th</sup> would be acceptable as well, in order to avoid scheduling all of the Phase IV EE&C hearings for the same day.
- The litigation schedule preceding the evidentiary hearing should be adjusted to correspond with the extension of the hearing date from the date established in the Prehearing Order (January 22) to February 8. Among other things, the parties should have an opportunity to supplement the Direct Testimony they are submitting tomorrow (January 14).<sup>2</sup> For the reasons stated in the *Joint Motion*, parties need an opportunity to address any responsive pleadings – which can be submitted as late as January 22, based on the Notice – in their testimony. Supplemental Direct Testimony could also be used to further develop the points made in Direct Testimony to reflect discovery responses that are still being received by the parties.
- NRDC therefore proposes the following litigation schedule preceding the February evidentiary hearing:
  - January 20: Rebuttal testimony (original date)
  - January 27: Other parties' filing of Supplemental Direct Testimony
  - February 4: Supplemental rebuttal testimony

The post-hearing dates in the OALJ's Proposed Revised Schedule would remain unchanged.

NRDC appreciates the opportunity to submit this response to the *Interim Order*, and we remain willing to work with Your Honors, the parties and the Company to reach an acceptable procedural schedule for this proceeding.

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<sup>2</sup> In denying a motion by several parties to suspend the procedural schedule today, Judge DeVoe indicated that “parties may want to consider proposing a deadline for the filing of supplemental direct testimony” in their responses to the Interim Order.

Respectfully submitted this 13<sup>th</sup> day of January, 2021.

*/s/ James M. Van Nostrand*

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CC: Secretary Rosemary Chiavetta, via efile  
Chief Administrative Law Judge Charles Rainey, [crainey@pa.gov](mailto:crainey@pa.gov)  
Certificate of Service

**CERTIFICATE OF SERVICE**

Petition of PECO Energy Company for :  
Approval of its Act 129 Phase IV Energy : Docket No. M-2020-3020830  
Efficiency and Conservation Plan :

I hereby certify that this day I served a copy of Natural Resource Defense Council’s response to *Interim Order Directing Parties to Respond to Joint Expedited Motion and OALJ’s Proposed Revised Schedule* in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

***Via Electronic Mail***

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